

**INFORMATION SHARING AND CONFIDENTIALITY AGREEMENT BETWEEN  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND  
CALIFORNIA AIR RESOURCES BOARD REGARDING OCEANGOING VESSEL  
FUELS ENFORCEMENT**

1. This Agreement reflects the mutual understanding between the California Air Resources Board ("ARB") and the United States Environmental Protection Agency ("U.S. EPA") (collectively, the "Agencies") with respect to the sensitive and privileged nature of certain documents and electronic models ("Information") that may be shared between the Agencies that relate to enforcement of fuel content regulations for ocean-going vessels ("OGV Fuel Rules").

2. The Agencies share close and common interests in the enforcement of federal and state OGV Fuel Rules. Common interests include, but are not limited to, ensuring compliance with the federal and California Clean Air Acts and federal and state regulations adopted thereunder, protecting public health, safety, and welfare, and preserving environmental quality. The Agencies wish to share the Information to assist with their respective enforcement efforts. U.S. EPA and ARB accordingly agree that the sharing of Information by their employees, consultants, agents, and counsel will further their common enforcement goals.

3. The Agencies agree to treat the disclosed Information as privileged or business confidential to the extent permitted by law. Any disclosure of Information between each Agency will not constitute a waiver of any relevant privileges or claims of business confidentiality.

4. Specifically, the Agencies wish to exchange any and all Information regarding the OGV Fuel Rules, including but not limited to enforcement investigation files, emissions models, and any other documents or technical information relating thereto that are marked or otherwise identified as confidential and/or deliberative, and/or may otherwise be exempt from disclosure.

5. The Information is subject to privileges and claims of business confidentiality that may be asserted in response to federal Freedom of Information Act and/or California Government Code requests and any third party request, including requests in any litigation, and in potential civil enforcement actions, whether administrative or judicial. The purpose of this Agreement is to enable the Agencies to share this Information without waiving privilege or claims of business confidentiality.

6. ARB agrees that the Information shared pursuant to this Agreement may be exempt from public disclosure because it may be exempt or considered not to be public records or agency records under California Government Code sections 6254, 6254.9, 6254.17, 6254.18, 6254.19, 6254.20, 6254.25, 6254.29, and 6255. ARB further agrees that, pursuant to California Government Code section 6254.5, subdivision (e), the above-referenced Information shall only be used for purposes that are consistent with existing law and that the confidentiality of the shared Information will be maintained to the extent authorized by law or court order.



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7. The Information shared pursuant to this Agreement may be exempt from public disclosure under the Freedom of Information Act, 5 U.S.C. §§ 552 (b)(2); (b)(4); (b)(5); and/or (b)(7).

8. The Agencies agree that this Information will only be shared with persons authorized in writing by the person in charge of the respective Agency or by his or her authorized delegate. The Agencies shall each take all necessary and appropriate measures to ensure that any person who is granted access to any of the Information shared pursuant to this Agreement is familiar with the terms of this Agreement and complies with such terms as they relate to the duties of such person.

9. The Agencies specifically intend that all such privileges and claims of business confidentiality shall be preserved, and that privileged and confidential Information shall be protected from disclosure to any third party, except with respect to disclosures agreed to by both U.S. EPA and ARB and disclosures otherwise mandated by law or court order. The Agencies do not intend, through their consultations either before or after the initiation of any litigation that may result from their investigations, to waive any privilege or claims of business confidentiality, such as, but not limited to, deliberative process, attorney-client, work product privileges, and records compiled for investigatory or law enforcement purposes, which would otherwise attach to any Information shared between the Agencies.

10. The Agencies further agree to consult with each other and notify each other in writing within a reasonable amount of time, not less than 10 working days, before producing any Information covered by this Agreement, whether such production is made voluntarily, in response to any discovery request, or pursuant to any other law or regulation.

11. The Agencies agree that this Agreement memorializes their earlier written and/or oral understanding with regard to the protection of previously shared Information, and shall also apply retroactively to that Information.

12. Either of the Agencies may terminate this Agreement by notifying the other party in writing of its intention to withdraw from this Agreement.

13. The Agencies acknowledge their common interest in the matters to which the Information pertains, and in maintaining the Information's privileged nature or claims of business confidentiality. The Agencies agree that neither of the Agencies is authorized to unilaterally waive the privilege or business confidentiality with respect to any Information shared pursuant to this Agreement.

14. If any subsection, paragraph, subparagraph, sentence, clause, phrase, or portion of this Agreement is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of the Agreement.

15. This Agreement shall not be modified except by written agreement dated subsequent to the date of this Agreement and signed by the authorized representatives of all parties.

16. This Agreement is intended to be executed on separate signature pages. This Agreement and any modifications thereto shall be effective when at least one counterparty has been executed by each party. Faxed or emailed signatures shall constitute original signatures binding on the signing party.

17. Each of the undersigned representatives of the Agencies certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such entity to all terms and conditions of this Agreement.

[Signatures appear on the following page.]


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The parties signed below are authorized to sign on behalf of their respective agencies.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

Dated: 10/14/16

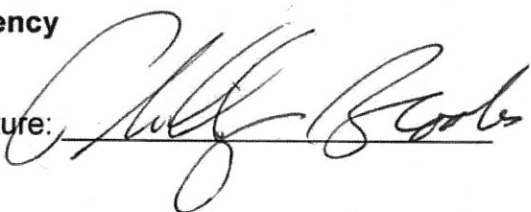
Signature: 

By: Dr. Todd Sax

Title: Chief, Enforcement Division

**United States Environmental Protection Agency**

Dated: 9/15/2016

Signature: 

By: Phillip A. Brooks

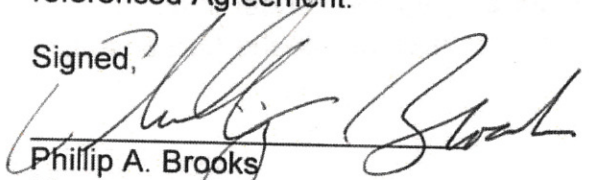
Title: Director, Air Enforcement Division

## INTERAGENCY INFORMATION SHARING AGREEMENT

### U.S. Environmental Protection Agency Authorized Persons

The following persons are authorized to obtain information pursuant to the above-referenced Agreement.

Signed,



Phillip A. Brooks

Director, Air Enforcement Division, U.S. EPA

Date:

### *Authorized Persons*

Zoltan Jung



## **INTERAGENCY INFORMATION SHARING AGREEMENT**

### **U.S. Environmental Protection Agency Authorization Acknowledgment**

I acknowledge that I have received a copy of the Interagency Information Sharing Agreement, and that I have been authorized to receive information under that agreement. I will treat the information which I receive consistent with the Agreement.

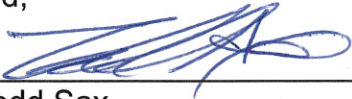
Name: Zoltan Jung  
Title:  
Date:

## INTERAGENCY INFORMATION SHARING AGREEMENT

### California Air Resources Board Authorized Persons

The following persons are authorized to receive information pursuant to the above-referenced Agreement.

Signed,



Dr. Todd Sax  
Chief, Enforcement Division  
Date:

#### ***Authorized Persons***

Russell Furey

Cory Parmer

Andrew Willey

